

RULES
OF
GEORGIA DEPARTMENT OF AGRICULTURE
PLANT PROTECTION

CHAPTER 40-4-9
LIVE PLANT REGULATIONS

TABLE OF CONTENTS

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|------------------------------------------------------|
| 40-4-9-.01 Definitions |
| 40-4-9-.02 Licensing |
| 40-4-9-.03 Fees |
| 40-4-9-.04 Movement of Live Plants into Georgia |
| 40-4-9-.05 Inspection and Maintenance of Live Plants |
| 40-4-9-.06 Live Plant Shipping Certificates |
| 40-4-9-.07 Sale and Distribution of Live Plants |
| 40-4-9-.08 Records |
| 40-4-9-.09 Special Inspections and Permits |
| 40-4-9-.10 Pest-Free Premise Certification or Permit |
| 40-4-9-.11 Unlawful Acts |
| 40-4-9-.12 Enforcement and Penalties |

PURPOSE: Plant pests are commonly spread through the movement of live plants. This Chapter establishes minimum requirements that plants sold within the state must be free from pests and prohibits the sale of certain noxious weeds. The licensing fees established in this Chapter support the plant inspection and pest detection program, as required by the Entomology Act.

40-4-9-.01 Definitions. The following words or terms shall have the meaning set forth herein when used in these rules and regulations.

(a) Bare Root Plant: Any live plant that has been uprooted and separated from its growing medium, then bagged in moss, sawdust or other material to provide temporary moisture to the roots. A bare root plant is also any plant that has been uprooted from its growing medium and placed in controlled atmosphere conditions or heeled in with sawdust, packing material or soil as a means for supplying moisture until it has been planted.

(b) Certificate: Any document issued by the Department attesting to the Plant Pest or treatment status of any Regulated Article.

(c) Commissioner: The Commissioner of Agriculture or any employee of the Department authorized to act on his behalf.

(d) Compliance Agreement: Any written agreement between a person and the Department specifying requirements enforced by the Department for regulatory purposes.

(e) Containerized Plant: Any live plant grown in a container where the plant is healthy, vigorous, well rooted, and established in the container in which it is growing. Containerized plants must possess a well-established root system reaching or nearly reaching the sides of the container to maintain a firm ball when the container is removed, but not possessing excessive root growth that encircles the inside of the container.

(f) Department: The Georgia Department of Agriculture.

(g) Dormant Plant: Any plant or plant part that is not in an active state of growth as evidenced by the lack of vegetative bud swelling and/or shoot growth.

(h) Federal Noxious Weed: Any plant listed under Title 7, Code of Federal Regulations, Part 360 "Noxious Weed Regulations".

(i) Fees: Assessments of costs for the purpose of defraying the expenses of registration of Live Plant Growers and Live Plant Dealers, and expenses of inspection and certification of Regulated Articles.

(j) Live Plant: Any whole or propagative part of any member of the Plant Kingdom, capable of or intended for propagation or growth. It does not include true seeds, cut flowers, or decorative cut foliage.

(k) Live Plant Dealer: Any person who does not grow or propagate Live Plants, but who handles, maintains, solicits orders for, sells, or distributes any Live Plants.

(l) Live Plant Grower: Any person who propagates or grows any Live Plants for sale or distribution. This includes any person who digs or collects plants from the wild or residential area for sale or distribution.

(m) Live Plant License: A document issued by the Commissioner indicating that the Live Plants maintained by the licensee are regularly inspected by the Commissioner to ensure freedom from plant pests and absence of poor physical condition, and verifying that the licensee has registered with the Commissioner.

(n) Live Plant Shipping Certificate: A document issued by the Commissioner indicating that the Live Plants in the accompanying shipment have been grown and maintained under a regular inspectional program administered by the Commissioner in compliance with these Rules.

(o) Maintain: Both to prevent and control damage by Plant Pests to Live Plants, and to prevent Poor Physical Condition or decline in viability of Live Plants by providing proper environmental conditions, by applying water and nutrients, by applying chemical and cultural pest control, and by removing damaged, diseased, or dead plant material.

(p) Non-profit: Any government agency or bureau, any member of a county or independent school system, any college or university under the University System of Georgia or any 501 (c) organization.

- (q) Permit: A document issued by the Commissioner authorizing the movement of Regulated Articles to a specific destination in accordance with specific requirements.
- (r) Phytosanitary Certificate: A document issued by the Commissioner indicating that the specified Live Plants or Plant Products comply with the legal requirements of the importing state or country. Such a document may be either a State Phytosanitary Certificate or Federal Phytosanitary Certificate.
- (s) Plant Pest: Any organism which is determined by the Commissioner to be injurious to the agricultural, horticultural, or other interests of the state, including, but not limited to, insects, bacteria, fungi, viruses, or weeds.
- (t) Plant Products: Fruits, vegetables, grains, roots, bulbs, seeds, cut flowers, decorative cut foliage, wood, timber, and all other Live Plants or parts of Live Plants not intended for or used for propagation or growing.
- (u) Poor Physical Condition: Serious physical damage, serious wilting caused by lack of or by excessive water, damage caused by severe heat or cold, death, or any other condition which would cause decline in viability or increased susceptibility to plant pests when subsequently handled with normal care.
- (v) Quarantine: A verbal or written order issued by the Commissioner immediately prohibiting the sale or distribution of Regulated Articles from a given location, until released in writing by the Commissioner.
- (w) Regulated Articles: Live Plants, Plant Products or other things determined by the Commissioner to be capable of carrying Plant Pests.

Authority O. C. G. A. 2-7-1 et. seq.

40-4-9-.02 Licensing.

- (1) No person may engage in business as a Live Plant Dealer or a Live Plant Grower without obtaining a license issued by the Commissioner for each business location. Each sales or growing location must be identified and licensed by one name.
- (2) All applications for licenses must be filed with the Commissioner on forms obtained from him, and must include all information requested. Any changes in name, address, ownership, or classification occurring during the license period must be reported to the Commissioner within 10 days.
- (3) An applicant for a new Live Plant Dealer or Live Plant Grower license may not use a name which is the same as or is confusingly similar to that of a current licensee.
- (4) Licenses will be issued annually for the period ending December 31, and each license must be renewed each year by no later than December 31 on forms supplied by the Commissioner.

All licenses expire December 31 of each year.

(5) Any licensee not renewing the Live Plant License by December 31, that business will be immediately placed under quarantine without further notice and prohibited from moving or selling Live Plants until a new license is issued according to this Chapter. A \$50.00 late fee will be assessed for any Live Plant License renewed more than thirty (30) days after expiration.

(6) Any check used for payment of a Live Plant License that is returned for insufficient funds or any other cause is subject to a \$50.00 administrative fee.

(7) All Live Plant Dealer and Live Plant Grower licenses must be conspicuously displayed in a prominent location within the licensed location.

Authority O. C. G. A. 2-7-1 et. seq.

40-4-9-.03 Categories and Fees.

(1) Live Plant Grower: [as defined in 40-4-9-.01(l)]

(a) Annual registration fee of \$105.00 for each location where plants are grown, plus:

(b) An additional annual fee to defray costs of inspection of:

- i. \$5.00 per acre of sod or sprigs, and/or
- ii. \$8.00 per acre of field grown plants, and/or
- iii. \$14.00 per acre of container grown plants, greenhouse grown plants or collected native plants, and/or
- iv. The maximum annual fee to defray costs of inspection is \$1,100 per location.

(c) Where the business owner registers any fraction of an acre, the full per acre fee will be assessed.

(2) Hobby Grower.

(a) A Hobby Grower shall be defined as any person who has a production area less than 1,000 square feet.

(b) Annual registration fee of \$75.00

(3) Live Plant Dealers, Re-wholesalers, Agent or Broker [as defined in 40-4-9-.01(k)]

(a) Annual registration fee of \$125.00 for each location where plants are held or maintained.

(b) Individuals selling live plants at craft shows, fairs, flea markets or similar venues must be licensed as a Live Plant Dealer.

(4) Florist or Landscaper

(a) Any person or business that offers plants for sale as a Florist or Landscaper will be charged an annual registration fee of \$75.00 for each location.

(5) Non-Profit [as defined in 40-4-9-.01(p)]

(a) Each Non-profit 501(c) organization must provide documentation of their non-profit status with their Live Plant License application and;

(b) With each Live Plant License renewal.

(c) Plant clubs that have a plant sale only once per year may be issued a Live Plant License valid for that sale at no cost.

(6) Certification Fees:

(a) The Commissioner may assess fees for additional certifications or inspections not required by this Chapter. These certifications or inspections shall include but not be limited to:

(1) Federal or State Phytosanitary Certificates for the one time shipment of articles regulated by other countries or states

(2) Live Plant Shipping Certificates to accompany sales or shipment of Live Plants

(3) Special Permit for the shipment of articles regulated by another state or foreign country

(4) Diagnostic fees for the identification of plant pests or certification.

(b) The Certification Fees shall be published by the Commissioner on or by July 1 of each year.

Authority O. C. G. A. 2-7-1 et. seq.

40-4-9-.04 Movement of Live Plants into Georgia.

(1) Any Live Plant Grower or Live Plant Dealer who is licensed in another state and in full compliance with all the plant protection laws of that state may sell or distribute Live Plants to locations in Georgia provided:

(a) all Live Plants are apparently free from plant pests as defined in 40-4-9-.01 (s) above, are not designated as a Federal Noxious Weed and comply with Chapter 40-4-7 "Regulations For The Movement Of Vegetable Transplants Into Georgia", Chapter 40-4-24 "Blueberry Scorch Virus Quarantine", and all other Georgia plant regulations and quarantines.

(b) all Live Plants are accompanied by a valid inspection Certificate from the state of origin, and a bill of lading or invoice describing the shipment and licensed destination.

- (c) all Live Plants are in compliance with all other requirements of this Chapter.
 - (d) the name and address of the Live Plant Grower or Live Plant Dealer has been submitted to the Department as duly licensed in the state of origin by the plant regulatory officials of that state.
 - (e) the state of origin will accept Live Plants from Georgia when properly certified by the Department.
- (2) Any Live Plant Grower or Live Plant Dealer who operates a sales or growing location in Georgia must be licensed by Georgia as required by this Chapter.
- (3) The Commissioner or his agent may order any live plants to be quarantined, returned to place of origin or destroyed at cost to the owner if the plants are believed to have entered Georgia in violation of the Rules of this Chapter.

Authority O. C. G. A. 2-7-1 et. seq.

40-4-9-.05 Inspection and Maintenance of Live Plants.

- (1) The Commissioner will inspect each Live Plant Dealer or Live Plant Grower location prior to issuance of a license, and at any other time at his discretion. All Live Plants at any location must be:
- (a) apparently free of plant pests,
 - (b) in good physical condition,
 - (c) adequately maintained,
 - (d) sufficiently free of weeds and grasses to ensure that such weeds and grasses do not:
 - 1. serve as a source of plant pests,
 - 2. interfere with the general health of the Live Plants,
 - 3. interfere with a dependable inspection,
 - (e) in conformance with requirements of any applicable Compliance Agreement, and
 - (f) in full compliance with all other requirements of this Chapter.
- (2) The Commissioner may specify the conditions under which Live Plants or Plant Products are produced in order to certify that such Live Plants or Plant Products are free of plant pests and in good physical condition.
- (3) All Live Plants being grown, sold, or held for distribution, and located in Georgia must be properly maintained as defined in 40-4-9-.01 (o) above. Discretion as to what is proper maintenance consistent with the requirements of this Chapter is left to the discretion of the area

inspector.

(4) Bare-root Live Plants may be maintained indoors if held under controlled-atmosphere storage conditions of no less than ninety percent relative humidity at a temperature between 32F and 38F, or they may be maintained outdoors if heeled into sawdust, packing material, or soil and protected at all times from extremes of heat or cold, and provided with adequate water.

(5) Leafed-out deciduous Live Plants may not be sold bare-root.

(6) The Commissioner or his agent may order any live plants to be quarantined and/or destroyed at cost to the owner if the plants are believed to be or if they exhibit signs or symptoms of infestation or infection with a plant pest.

Authority O. C. G. A. 2-7-1 et. seq.

40-4-9-.06 Live Plant Shipping Certificates.

(1) Live Plant Shipping Certificates will be issued only to those Live Plant Growers and Live Plant Dealers who are licensed and in full compliance with all requirements of this Chapter.

(2) Live Plant Shipping Certificates will be provided by the Commissioner upon request of the licensee, at cost. A licensee may print its own shipping certificates by applying annually in writing at the time of license renewal to the Commissioner for approval. The form and content of the Certificate must be approved by the Commissioner prior to use by the licensee.

(3) Live Plant Shipping Certificates may not be used on any Live Plants which are not under a regular inspectional program of the Department, nor may such Certificates be used to misrepresent the state of origin of Live Plants.

(4) The Commissioner may impose monetary penalties or recall the Live Plant Shipping Certificates at any time he finds that Certificates are either not being used in accordance with the requirements and stipulations of this Chapter or to accompany Live Plants which would not pass inspection because of presence of Plant Pests or deterioration.

Authority O. C. G. A. 2-7-1 et. seq.

40-4-9-.07 Sale and Distribution of Live Plants.

(1) The sale or distribution of any plant listed on the Federal Noxious Weed list or determined by the Commissioner to be a public nuisance is prohibited.

(2) All Live Plant Growers and Live Plant Dealers must purchase Live Plants only from those persons or businesses who are duly licensed by the Department according to this Chapter, or who are duly licensed by the regulatory agency of the state in which that person or business is located, or whose plants have been inspected by the appropriate regulatory agency of the state of origin.

(3) Any sale or distribution of Live Plants other than direct retail sales to walk-in consumers must be accompanied by:

(a) a Live Plant Shipping Certificate, conspicuously attached to the Live Plants or to the invoice or bill of lading.

(b) an invoice or bill of lading showing the licensed name and address of the Live Plant Grower or Live Plant Dealer, the date of sale, and the number, size, and variety of all Live Plants.

(c) a written statement of any guarantees or conditions made by the seller or distributor as part of the transaction.

(4) No live Plant Grower or Live Plant Dealer may substitute any Live Plant variety or size in lieu of that contracted for by the purchaser, except by agreement of the purchaser. Plant size shall be described as:

(a) The plant height shall be the distance measured in feet and/or inches from the soil line to the uppermost part of the plant.

(b) The total spread shall be the distance measured in feet or inches across the greatest diameter of the plant.

(5) At the request of the purchaser, refund of payment must be made by any Live Plant Grower or Live Plant Dealer on all orders of Live Plants which have not been delivered within 90 days of acceptance of payment, and which are not covered by a contract on a future order.

Authority O. C. G. A. 2-7-1 et. seq.

40-4-9-.08 Records. All Live Plant Growers and Live Plant Dealers must maintain records showing the source and date of purchase of all Live Plants received during the past twelve months. Such records must be made available to the Commissioner during normal business hours.

Authority O. C. G. A. 2-7-1 et. seq.

40-4-9-.09 Special Inspections and Permits. Special inspections for issuance of special permits, compliance letters, phytosanitary certificates, post-entry permits, other certificates and other documents may be performed by the Commissioner upon request and upon payment of the appropriate fee.

Authority O. C. G. A. 2-7-1 et. seq.

40-4-9-.10 Pest-Free Premise Certification or Permit.

(1) Certificates may be issued for the following premises used for the production of:

- a. Ornamental plants
- b. Plant material or seeds certified for varietal purity
- c. Pine and/or hardwood seedlings
- d. Sod or turfgrass sprigs

(2) Treatment of certain premises may be necessary to prevent the unnatural intrastate and interstate movement of plant pests, including but not limited to federal noxious weeds, via extensive agricultural, forestation and re-forestation, and horticultural practices common to the state. The preferred method of treatment, to insure pest-free plant material, is fumigation using methyl bromide in fields or seedling plant beds prior to seeding. All such treatments shall be done using state and federally-registered pesticides. Each shipment originating from another state must be accompanied by a certificate of inspection issued by the state of origin to verify inspections and/or treatments. Fumigation certificates shall be issued by an inspector for intrastate and interstate shipments of plants or seed upon request.

Authority O. C. G. A. 2-7-1 et. seq.

40-4-9-.11 Unlawful Acts. Any of the following acts will constitute a violation of this Chapter.

- (a) The sale or distribution of any Live Plants infected or infested with Plant Pests or in poor physical condition.
- (b) The sale or distribution of any plant listed on the Federal Noxious Weed list or determined by the Commissioner to be a public nuisance.
- (c) The sale or distribution of any Live Plants not accompanied by any Certificate required by this Chapter or by any Compliance Agreement.
- (d) The use of any Certificate on Live Plants infected or infested with Plant Pests, or in poor physical condition.
- (e) The use of any Certificate on any Live Plants which are not covered by a regular inspectional program of, or have not been inspected by the Department.
- (f) The use of any Certificate on any Regulated Article in violation of any Compliance Agreement.
- (g) The propagation, growing, and maintenance of any Live Plants intended for sale or distribution by any person who is not licensed as required by this Chapter.
- (h) The making of any false statement or false promise for the purpose of making a sale of any Live Plants, including but not limited to misrepresentation of name, size, variety, number, availability, description, or condition.
- (i) The failure of any Live Plant Grower or Live Plant Dealer to deliver or make available any Live Plants for which he has accepted payment.
- (j) The failure of any Live Plant Grower or Live Plant Dealer to maintain records as required by this Chapter, or to make those records available to the Commissioner upon request during normal business hours.

(k) The obstruction of the Commissioner in the performance of his duties.

Authority O. C. G. A. 2-7-1 et. seq., 2-11-2

40-4-9-.12 Enforcement and Penalties.

(1) The Commissioner may place a Quarantine or issue a Stop Sale on any Regulated Article which he finds to be infected or infested with Plant Pests or in poor physical condition until the problem can be corrected. If the problem is not corrected during the time specified by the area inspector, or is not correctable, the Commissioner may require the treatment or destruction of the Regulated Article by the owner. If the Regulated Article is not treated or destroyed, the Commissioner may treat or destroy the article and assess the costs of treatment or destruction against the owner of the premises.

(2) The Commissioner may recall any Certificate from any person when he finds that the Certificate has been misused.

(3) The Commissioner may Quarantine any location where he finds any Regulated Article being propagated, grown, maintained, sold, or distributed in violation of any requirement of this Chapter or any Compliance Agreement.

(4) Any person who violates any of the requirements of this Chapter shall be guilty of a misdemeanor, punishable by a fine of not more than one thousand dollars or one year in jail.
Authority O. C. G. A. 2-7-1 et. seq.